

Before the
Communications Commission
Washington, DC

In the Matter of:

Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description

Closed Captioning of Internet Protocol-Delivered Programming

Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

MB Docket No. 12-107

MB Docket No. 11-154

Reply Comments of

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
American Association of the Deaf-Blind (AADB)
National Association of the Deaf (NAD)
Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)
Hearing Loss Association of America (HLAA)
Association of Late-Deafened Adults (ALDA)
Cerebral Palsy and Deaf Organization (CPADO)
Rehabilitation Engineering Research Center
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SUMMARY

The Commission has before it the critical task of ensuring that emergency information is accessible to people with disabilities, pursuant to the Twenty-First Century Communications and Video Accessibility Act (“CVAA”). In these comments, we call on the Commission to account for the essential right of people who are both blind or visually impaired *and* deaf or hard of hearing to access emergency information. We also join other commenters in encouraging the Commission to address the need for equal access to emergency information delivered via Internet Protocol (“IP”). Further, we urge the Commission to ensure that its emergency accessibility and apparatus rules have the appropriately broad scope required by the CVAA, and to reject impermissible limitations included in the Commission’s Notice of Proposed Rulemaking and proposed by industry commenters. Finally, we encourage the Commission to reject various proposals to narrow the scope of covered apparatuses in a manner inconsistent with the *IP Closed Captioning Order*, and to set compliance deadlines tied to the date when products are sold or impose labeling requirements to minimize consumer confusion.

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REPLY COMMENTS

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the American Association of the Deaf-Blind (AADB), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, “Consumer Groups,” and the Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA), respectfully submit these comments in reply to comments on the Commission’s Notice of Proposed Rulemaking in MB Docket No. 12-107 (“NPRM”).¹ These comments also reference ongoing matters in MB Docket No. 11-154 and are accordingly cross-filed in that docket.

Consumer Groups seek to promote equal access to telecommunications, including video programming, for the millions of Americans who are deaf, hard of hearing, late-deafened, visually impaired and hard of hearing, or deaf-blind so that they may fully experience the informational, educational, cultural, and societal opportunities afforded by the telecommunications revolution. The RERC-TA is a joint project of the Technology Access Program at Gallaudet University and the Trace Center at the University of Wisconsin-Madison to carry out a program of research and development focused on technological solutions for universal access to telecommunications systems and products for people with disabilities.²

¹ *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description*, Notice of Proposed Rulemaking, 27 FCC Rcd. 14,728 (Nov. 19, 2012) (“NPRM”).

² Content in these comments contributed by RERC-TA was developed with funding from the National Institute on Disability and Rehabilitation Research,

I. The Commission must ensure that emergency information is accessible to people who are blind or visually impaired *and* deaf or hard of hearing.

We join National Public Radio (“NPR”) in expressing serious concern over the *NPRM*’s failure to ensure that people with both visual and hearing disabilities will be able to access emergency information on equal terms.³ While the Commission’s proposal to require the provision of emergency information on a secondary audio stream may well serve the needs of many segments of the blind and visually impaired community,⁴ it would do nothing to ensure equal access for the more than 1 million Americans who are blind or visually impaired and cannot access audible emergency information because they are also deaf or hard of hearing.⁵

By not addressing the needs of people with both visual and hearing disabilities, the Commission’s proposal fails to satisfy the basic and unqualified mandate of the CVAA and the Commission’s own stated purpose in conducting this rulemaking. Specifically, Section 202(a) of the CVAA requires the regulations promulgated in this proceeding to ensure that “emergency information [is conveyed] in a manner accessible to *individuals who are blind or visually impaired*.”⁶ The Commission itself notes that “[t]his proceeding seeks to . . . ensur[e] that the

U.S. Department of Education, grant number H133E090001. However, these comments do not necessarily represent the policy of the Department of Education or imply endorsement by the federal government.

³ See Comments of NPR, MB Docket No. 12-107, at 2-4 (Dec. 18, 2012) (“*NPR Comments*”); NPR, Notice of *Ex Parte* Presentation, MB Docket No. 12-107, at 1 (Dec. 17, 2012) (“*NPR Ex Parte*”).

⁴ *NPRM*, 27 FCC Rcd. at 14,734-35, ¶ 7.

⁵ Comments of the Rehabilitation Engineering Research Center on Telecommunications Access and Consumer Groups, MB Docket No. 12-107, at 3-4 (Dec. 18, 2012) (“*RERC-TA and Consumer Groups Comments*”).

⁶ 47 U.S.C. § 613(g)(2) (emphasis added).

critical details of emergency information . . . will be fully accessible to those members of [a] program's audience *who are blind or visually impaired.*"⁷

People who are blind or visually impaired are no less so because they are also deaf or hard of hearing, and the CVAA does not permit the Commission to deny access to a substantial segment of the blind and visually impaired community simply because they have another disability. Accordingly, we urge the Commission to require that emergency information be made available through both a secondary audio channel and closed captions, as described in our initial comments, to facilitate equal access for people who are both blind or visually impaired *and* deaf or hard of hearing.⁸

We also agree with NPR that USB connections on digital televisions could provide an effective means to port emergency information from Common Alerting Protocol ("CAP") messages to refreshable Braille devices.⁹ However, there must exist a reliable method to transmit the text of alert messages to consumers' televisions. We agree with NPR that CAP messages could be distributed "directly" to televisions independently of a program feed, such as by having television monitor an Internet-based CAP emergency alert feed and output the information.¹⁰ But consumers must also have a reliable source of emergency information directly tied to the programming that they receive, and for this reason, the Commission should require emergency information to be distributed via closed captions in addition to acknowledging the possibility of Internet-enabled televisions monitoring CAP feeds.

⁷ NPRM, 27 FCC Rcd. at 14,733, ¶ 4 (emphasis added).

⁸ RERC-TA and Consumer Groups Comments at 6-7.

⁹ NPR Comments at 3-4.

¹⁰ See *id.* at 3.

Finally, we note the critical need for accessible user interfaces to enable emergency alerts. Because emergency situations are a particularly dangerous time to force consumers to learn to navigate a new interface for the first time, we recommend that the Commission require as a general principle that apparatuses permit consumers to access emergency information without doing anything more than they must do to access non-emergency video programming, and to adopt specific technical requirements as appropriate.

II. The Commission should ensure that people with disabilities have timely and equal access to IP-delivered emergency information.

We join the American Council of the Blind (“ACB”) in condemning the Commission’s proposal to apply the emergency information and video description rules to “television broadcast services and MVPD services, but not to IP-delivered programming that is not otherwise an MVPD service.”¹¹ In addition to perpetuating a digital divide for people who are blind or visually impaired with respect to video description, the proposal would place the lives of people with disabilities at risk during emergencies by denying them access to critical information delivered via IP. As several of the Consumer Groups noted in a recent *ex parte* filing, people with disabilities are increasingly relying on IP-delivered video programming services to obtain emergency information.¹² IP-delivered emergency information may be delivered contemporaneously with or even sooner than traditional broadcast or MVPD services, and is frequently available on-demand, ensuring that viewers do not miss critical details simply because they tune in after an emergency broadcast begins.

¹¹ *NPRM*, 27 FCC Rcd. at 14,734, ¶ 6; see Comments of the American Council of the Blind, MB Docket No. 12-107, at 1-2.

¹² *Ex Parte* Filing of TDI, et al., MB Docket No. 11-154 (Dec. 13, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022081775>.

III. The CVAA requires the Commission to ensure the accessibility of emergency information conveyed by all types of VPPs and VPDs under Rule 79.1, not just broadcasters or MVPDs.

Should the Commission nevertheless choose not to address the critical issue of accessible IP-delivered emergency information more broadly, it must proceed pursuant to the baseline standards required by the CVAA. Section 202(a) requires the Commission's emergency information rules to apply to all "video programming providers ["VPPs"] and video programming distributors ["VPDs"] (*as those terms are defined in section 79.1 of title 47, Code of Federal Regulations*) and program owners."¹³ Accordingly, we urge the Commission to clarify, consistent with the CVAA's plain text, that the emergency information rules apply to all VPDs and VPPs subject to Rule 79.1.

This clarification is essential because the definitions of VPDs and VPPs under Rule 79.1 encompass more than the Commission's proposal of "television broadcast services and MVPD services, but not . . . IP-delivered programming that is not otherwise an MVPD service."¹⁴ Rule 79.1(a)(1) defines VPDs to include all television broadcast stations, multichannel video programming distributors ["MVPDs"], as defined by Rule 76.1000(e), **and** "any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission."¹⁵ Rule 79.1(a)(2) similarly defines VPPs to include all VPDs and "any other entity that provides video programming that is intended for distribution to residential

¹³ 47 U.S.C. § 613(g)(2) (emphasis added).

¹⁴ See *NPRM*, 27 FCC Rcd. at 14,734, ¶ 6.

¹⁵ 47 C.F.R. § 79.1(a)(1).

households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming.”¹⁶

These definitions are rooted in the Commission’s 1997 proceeding to implement closed captioning regulations required by Section 305 of the Telecommunications Act of 1996.¹⁷ In crafting those regulations, the Commission concluded that Section 305 gave the Commission jurisdiction over “all types of video programming delivered electronically to consumers, regardless of the entity that provide[d] the programming or the category of programming.”¹⁸

Accordingly, the Commission specifically defined VPDs under Rule 79.1(a)(1) to include, in addition to broadcasters and MVPDs, “any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.”¹⁹ The Commission also acknowledged that Section 305 gave it jurisdiction to regulate Internet-based video services as VPDs and noted that the “convergence of television receivers and computers and the growth of Internet video like programming” would raise accessibility issues that “may need to be addressed in the future.”²⁰ The Commission further concluded that entities

¹⁶ 47 C.F.R. § 79.1(a)(2).

¹⁷ See generally *Closed Captioning and Video Description of Video Programming*, Report and Order, MM Docket No. 95-176, 13 FCC Rcd. 3272 (1997) (“1997 Closed Captioning Order”).

¹⁸ *Closed Captioning and Video Description of Video Programming*, Notice of Proposed Rulemaking, MM Docket No. 95-176, 12 FCC Rcd. 1044, 1048, ¶ 5 (1997) (“1997 Closed Captioning NPRM”).

¹⁹ 47 C.F.R. § 79.1(a)(1); see also *1997 Closed Captioning Order*, 13 FCC Rcd. at 3280, ¶ 18.

²⁰ *1997 Closed Captioning Order*, 13 FCC Rcd. at 3384-85, ¶¶ 248-49.

offering on-demand video services, which often utilize IP as a delivery mechanism, are VPDs within the meaning of Rule 79.1(a)(1).²¹

Beyond the broad general coverage of IP-based video delivery services as VPDs under Rule 79.1(a)(1), the Commission has further determined that many IP-based services qualify as MVPDs under the meaning of Rule 79.1(a)(1) and Rule 76.1000(e). More specifically, the Commission has concluded that “traditional managed video services that MVPDs provide to their MVPD customers within their service footprint,” including any “service through which an MVPD offers multiple channels of video programming, *including IP-based video offerings* such as those provided by AT&T,” are VPDs under the meaning of Rule 79.1.²² And the Media Bureau is currently considering in the context of the *Sky Angel* program access proceeding the possibility that the term “MVPD” more generally encompasses IP-based entities that deliver what consumers understand to be multiple “channels” of video programming.²³ Accordingly, we urge the

²¹ See *id.* at 3309, ¶ 80 (noting that the closed captioning rules apply to “‘video on demand’ type of service[s]” or other services where “the content of a channel is . . . dependent on specific subscriber requests”); see also *Motion Picture Association of America*, Petition for Expedited Special Relief, MB Docket No. 08-82, Case No. CSR-7947-Z, 25 FCC Rcd. 4799, 4807, ¶ 16 & n.60 (MB 2010) (“MPAA 2010”) (“video-on-demand services must be offered with closed captions”) (citing 47 C.F.R. § 79.1).

²² See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd. 787, 796 & n.71 (2012) (“IP Closed Captioning Order”) (emphasis added).

²³ *Media Bureau Seeks Comment on Interpretation of the Terms “Multichannel Video Programming Distributor” and “Channel” as Raised in Pending Program Access Complaint Proceeding*, Public Notice, MB Docket No. 12-83, 27 FCC Rcd. 3079 (2012). See generally Comments of TDI, et al., MB Docket No. 12-83 (May 14, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021917779>.

Commission to clarify that the emergency information rules apply to all VPDs and VPPs subject to Rule 79.1.

IV. The CVAA does not permit the Commission to unduly limit the scope of the apparatus rules.

In the *NPRM*, the Commission proposes to limit the scope of apparatuses subject to the emergency information requirements of Section 203(a) of the CVAA to those designed to receive, play back, or record television broadcast services or MVPD services.²⁴ Industry representatives invite the Commission to sew a crazy quilt of *sui generis* limitations around this proposal and exclude several classes of apparatuses, including devices that connect to various MVPD services, video game consoles, fixed media devices, and devices not intended by manufacturers to receive, play back, or record television broadcast services or MVPD services. Some of these proposals even cynically suggest that requiring apparatuses to be accessible to people with disabilities would somehow limit innovation in the video programming marketplace.²⁵

The Commission's proposal and the limitations suggested by industry commenters, however, are wholly unmoored from the plain text of the CVAA, inconsistent with Commission precedent, and lack grounding in sound public policy. As Carlton Hill of AT&T recently noted, the concept of accessible "design for all" should "not [be] viewed as a constraint but as a catalyst for innovation across the industry," concluding that the end result [of applying Universal Design principles to products and services] will be more choices for more

²⁴ *NPRM*, 27 FCC Rcd. at 14,745-46, ¶ 30.

²⁵ Comments of the Entertainment Software Association, MB Docket No. 12-107, at 5-7 (Dec. 18, 2012) ("*ESA Comments*"); Comments of the Telecommunications Industry Association, MB Docket No. 12-107, at 9-10 (Dec. 18, 2012) ("*TIA Comments*").

consumers.”²⁶ We urge the Commission to embrace this principle and the clear mandate of the CVAA by including all devices designed to receive, play back or record emergency information under the scope of the apparatus rules and rejecting limitations proposed by other commenters, consistent with the *IP Closed Captioning Order*.

A. The Commission must modify its proposal to limit the apparatus rules to devices designed to receive, play back, or record broadcast or MVPD services.

Section 203(a) of the CVAA requires that, where “technically feasible,” apparatus[es] designed to receive, play back or record video programming “transmitted simultaneously with sound” be capable of (A) displaying closed-captioned video programming, (B) decoding and making available video description services, and (C) decoding and making available emergency information under the meaning of 47 C.F.R. § 79.2.²⁷ As the *NPRM* repeatedly recognizes, the Commission adopted general principles in the course of implementing Section 203(a)’s closed captioning requirements that should be consistently applied to its emergency information requirements.²⁸

²⁶ Global Initiative for Inclusive Information and Communication Technologies, *Accessibility, Innovation, and Sustainability at AT&T*, at 8 (2011), available at http://www.att.com/Common/merger/files/pdf/G3ict_White_Paper.pdf.

²⁷ 47 U.S.C. § 303(u)(1), (z)(1).

²⁸ See, e.g., *NPRM*, 27 FCC Rcd. at 14,746-49, ¶¶ 31-37 (citing various portions of the *IP Closed Captioning Order*); see also Comments of American Foundation for the Blind, MB Docket No. 12-107, at 1-2 (Dec. 18, 2012) (“*AFB Comments*”) (“We believe that the *IP Closed Captioning Order* should and does inform much of what the Commission ought to do with respect to implementing the CVAA’s emergency information and apparatus provisions. It is vital that the Commission’s rules maintain consistency across various contexts so that both consumers and industry have the clearest possible understanding of what the law does and does not require.”).

More specifically, the Commission clarified in the *IP Closed Captioning Order* that Section 203(a) was intended to expand the scope of Section 303(u) of the Communications Act of 1934 “beyond devices that receive broadcast television” to reach all devices that “conve[y] [video programming] from the device . . . to the end user (simultaneously with sound).”²⁹ The plain text of Section 203(a) contains no provision permitting the Commission to carve out apparatuses from the closed captioning or emergency information requirements based on the underlying mechanism used to deliver video programming to the apparatus, regardless of whether that mechanism is broadcast television, an MVPD service, or something else.

The proposed justification in the *NPRM* for limiting the scope of the apparatus rules in context of emergency information—that the emergency information rules apply only to broadcasters and MVPDs—is wholly unavailing. Even if the apparatus rules could be limited to only those devices that access video programming subject to the Commission’s emergency information rules, the emergency information rules plainly must apply, at a bare minimum, to all

²⁹ *IP Closed Captioning Order*, 27 FCC Rcd. at 845-46, ¶ 99. The Consumer Electronics Association (“CEA”) rehashes arguments for an alternative interpretation of the CVAA that are the subject of its petition for reconsideration of the *IP Closed Captioning Order*. Comments of the CEA, MB Docket No. 12-107, at 9-10 (Dec. 18, 2012) (“*CEA Comments*”); see Petition for Reconsideration of the CEA, MB Docket No. 11-154, at 11-14 (Apr. 30, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021914799> (“*CEA PFR*”). As several of the Consumer Groups detailed in an opposition to the *CEA PFR*, CEA’s arguments are meritless. Opposition of TDI, et al., MB Docket No. 11-154, at 11-14 (June 7, 2012) (“*TDI Opposition*”), <http://apps.fcc.gov/ecfs/document/view?id=7021922030>. , We hereby incorporate that opposition here, in its entirety, by reference. We urge the Commission to reject CEA’s arguments again in this context for the reasons described in the opposition and the *IP Closed Captioning Order*. See *IP Closed Captioning Order*, 27 FCC Rcd. at 845-46, ¶ 99 & n.396.

VPPs and VPDs under Rule 79.1, not just broadcasters and MVPDs, and the Commission would have to revise its proposal to include devices capable of receiving, playing back, or recording programming delivered by all VPPs and VPDs.³⁰

But such a revision would not be sufficient, because the CVAA does not permit the Commission to limit the scope of the apparatus rules to simply those devices that access video programming subject to the emergency information or video description rules. As the Commission held in the *IP Closed Captioning Order*, the fact that programming is not required to be made accessible under Section 202 or other law does not excuse apparatus manufacturers from their obligations to render accessibility information pursuant to Section 203(a).³¹ For example, DVD players must be capable of rendering or passing through closed captions even though DVDs are not necessarily required to include captions.³²

Accordingly, whether emergency information under Rule 79.2(a)(2) is delivered by a service that must make it accessible pursuant to Rule 79.2(b) is wholly irrelevant to the applicability of the apparatus rules to devices that receive, play back, or record such information. Section 203(a) plainly requires apparatuses designed to record, receive or play back video programming simultaneously with sound to have the capability to decode and make available in an accessible manner any emergency information under Rule 79.2(a)(2) so long as it is technically feasible to do so. We urge the Commission to revise its proposal to encompass all such apparatuses in accordance with Section 203(a).

³⁰ See discussion *supra*, Part III.

³¹ See *IP Closed Captioning Order*, 27 FCC Rcd. at 845-46, ¶ 99.

³² *Id.*

B. The Commission must reject proposals to exclude apparatuses capable of connecting to certain MVPD services.

In addition to modifying its own proposal, the Commission must reject the various calls by industry commenters to exclude apparatuses that are capable of connecting to certain MVPD services. First, the Consumer Electronics Association (“CEA”) suggests excluding apparatuses “that merely interact with IP video content, including on-demand content, downloadable content, or streamed content,” or that receive “content that is not transmitted via linear broadcasting or traditional MVPD service . . . [such as] video on demand or stored video content (e.g., via downloading or streaming).”³³ The Telecommunications Industry Association (“TIA”) similarly suggests excluding apparatuses “that d[o] not play linear live video programming” or “that play previously-recorded live content, including over a download or stream.”³⁴

CEA’s and TIA’s misguided suggestions ignore that Rule 79.1’s definition of VPD squarely includes MVPDs that deliver on-demand, non-linear, downloadable, and streamed content via IP within the scope of their MVPD footprints.³⁵ Section 203(a) plainly does not permit the Commission to exclude devices that receive, play back, or record MVPD-delivered content from the apparatus rules, and the Commission must reject CEA’s and TIA’s proposals accordingly.

CEA additionally argues that “requiring apparatus to display emergency information when playing back previously recorded video content would have very little utility, if any, due to the time-sensitive nature of such information.”³⁶

³³ CEA Comments at 5, 9.

³⁴ TIA Comments at 7.

³⁵ See discussion *supra*, Part III.

³⁶ CEA Comments at 9.

This overbroad proposition ignores that emergency information delivered on-demand shortly after its initial recording is at least as useful as the same information delivered in a linear fashion, and often will be even more useful given that a viewer can receive the information in its entirety even if he or she is not present for the beginning of its delivery, and can repeat portions that he or she did not understand on the first viewing.³⁷ Moreover CEA's speculative concerns that "affirmative harm could result from the display of information . . . describ[ing] a situation that is no longer a 'current emergency'" are far outweighed by the obvious utility of making on-demand emergency information accessible and can be easily ameliorated by clearly communicating to viewers the time and date at which information was posted.³⁸

C. The Commission must reject proposals to exclude specific classes of apparatuses, such as video game consoles and tablets.

The Entertainment Software Association ("ESA") suggests excluding video game consoles and other devices that do not access MVPD programming "directly through an MVPD connection."³⁹ TIA similarly suggests excluding "[p]ersonal computers, smart phones, tablet PCs and gaming consoles used to watch [IP]-delivered programming."⁴⁰ But as the National Cable and Telecommunications Association ("NCTA") points out, apparatuses such as "game consoles and tablets" are "used to access MVPD services" and other services that carry emergency information, and are sometimes even supplied to consumers by MVPDs specifically for the purpose of accessing MVPD services.⁴¹

³⁷ See discussion *supra*, Part II.

³⁸ See CEA Comments at 9.

³⁹ ESA Comments at 3-5.

⁴⁰ TIA Comments at 8.

⁴¹ See Comments of the National Cable and Telecommunications Association, MB

For example, Nintendo's new *TVii* service on the Nintendo Wii U video game console includes the ability to "find TV shows, movies, and sports across your *existing cable or satellite channels*," and to "quickly *access your favorite channels*."⁴² Microsoft similarly offers access to a variety of MVPD services on its Xbox 360 console, including Comcast Xfinity and Verizon FiOS TV.⁴³ Conversely, MVPDs like Time Warner Cable advertise the ability to access their programming, such as "live TV on up to 250 channels" on a variety of IP-connected devices, including tablets, computers, and smart phones.⁴⁴ Again, Section 203(a) plainly does not permit the Commission to exclude devices that receive, play back, or record MVPD-delivered content from the apparatus rules, and the Commission must reject these proposals accordingly.⁴⁵

D. The Commission should reject CEA's proposal to exclude removable media players from the apparatus rules.

CEA proposes that the Commission exclude "standalone removable media players (e.g., those that play removable media such as DVDs and Blu-ray Discs)" from the apparatus rules.⁴⁶ This proposal largely rehashes arguments that are the

Docket No. 12-107 (Dec. 18, 2012) ("*NCTA Comments*").

⁴² Nintendo, *Wii U Official Site – Built In Software* (last visited Jan. 7, 2012), <http://www.nintendo.com/wiiu/built-in-software#/tvii>.

⁴³ Microsoft, *Xbox LIVE Features and Apps* (last visited Jan. 7, 2012), <http://www.xbox.com/en-US/LIVE/Features-and-Apps>.

⁴⁴ Time Warner Cable, *TWC TV* (last visited Jan. 7, 2012), <http://www.timewarnercable.com/en/residential-home/apps/twc-apps/overview/twc-tv.html>.

⁴⁵ We also urge the Commission to repudiate ESA's absurd and wholly unsupported insinuation that requiring electronics manufacturers to make their products capable of conveying an accessible manner emergency information provided by third-party content owners could violate manufacturers' First Amendment rights. *See ESA Comments* at 3, n.11 (citation omitted).

⁴⁶ *CEA Comments* at 8-10.

subject of CEA's petition for reconsideration of the *IP Closed Captioning Order*, where the Commission properly determined that removable media players are subject to Section 203(a).⁴⁷ As several of the Consumer Groups detailed in an opposition to the petition, CEA's arguments are meritless.⁴⁸ We urge the Commission to reject them again in this context for the reasons described in the opposition and the *IP Closed Captioning Order*.⁴⁹

CEA additionally argues that "[e]mergency information will no longer be relevant at the time consumers play back video programming on removable media players."⁵⁰ While we express no opinion about the merits of this potentially over-broad assertion, CEA's specific proposal for excluding removable media players must be rejected because it is inconsistent with the plain text and obvious intent of the CVAA and the well-reasoned precedent of the *IP Closed Captioning Order*.

We agree with admonition of the American Foundation for the Blind ("AFB") that "industry compliance with the CVAA's emergency access requirements can, by definition, never be inconsistent with the public interest."⁵¹ Nevertheless, we acknowledge the possibility that the Commission will determine that it would not serve the public interest to require emergency information to be accessible on removable media players that do not also have the capability of accessing emergency information through another mechanism, such as a broadcast, MVPD, or other VPD service. If the Commission does so,

⁴⁷ *IP Closed Captioning Order*, 27 FCC Rcd. at 845-46, ¶¶ 99-100; see *CEA PFR*, *supra* note 29, at 8-18.

⁴⁸ *TDI Opposition*, *supra* note 29, at 11-20.

⁴⁹ See *IP Closed Captioning Order*, 27 FCC Rcd. at 845-46, ¶¶ 99-100.

⁵⁰ *CEA Comments* at 8.

⁵¹ *AFB Comments* at 2.

however, it must exclude such players from the apparatus rules only through other means, such as the exercise of its general waiver authority under 47 C.F.R. § 1.3, rather than adopting an untenable reading of Section 203(a) that would conflict with the *IP Closed Captioning Order*.⁵²

E. The Commission should reject CEA’s proposal to exclude products from the apparatus rules based on manufacturer intent.

CEA proposes that the Commission exclude apparatuses “that are not intended . . . by manufactures to receive, play back, or record video programming” from the apparatus rules, instead of adopting the Commission’s proposal to cover apparatuses that include integrated video players.⁵³ Again, this proposal largely rehashes arguments that are the subject of CEA’s petition for reconsideration of the *IP Closed Captioning Order*, where the Commission properly determined that devices that are “sold with (or updated by the manufacturer) to add an integrated video player” are subject to Section 203(a).⁵⁴ As several of the Consumer Groups detailed in their opposition to the petition, CEA’s arguments are plainly without merit.⁵⁵ We urge the Commission to reject

⁵² To be clear, we strenuously oppose the Commission’s proposal to cover removable media players under the apparatus rules “only to the extent that they receive, play back, or record television broadcast services or MVPD services.” See *NPRM*, 27 FCC Rcd. at 14,747, ¶ 34. Should the Commission choose to exclude removable media players from the apparatus rules in the emergency information context—and we do not believe that the Commission should do so—it should only exclude players that have lack *any means other than removable media* to access emergency information.

⁵³ *CEA Comments* at 6-8; *NPRM*, 27 FCC Rcd. at 14,746, 14,754-55, ¶ 32 & n.117, App’x A (proposed Rules 79.105(a)(2) (note) and 79.106 (a) (note)).

⁵⁴ See *CEA PFR*, *supra* note 29, at 3-8; *IP Closed Captioning Order*, 27 FCC Rcd. at 842, ¶ 95.

⁵⁵ *TDI Opposition*, *supra* note 29, at 2-11.

them again in this context for the reasons described in the opposition and the *IP Closed Captioning Order*.⁵⁶

CEA additionally cites to examples of devices, submitted in an *ex parte* filing in support of its petition, that it believes should not be covered by the apparatus rules because they “are not intended . . . by manufacturers to receive, play back, or record video programming.”⁵⁷ But even if a manufacturer’s intent were relevant to the scope of the apparatus rules, CEA’s argument is self-defeating because its examples include devices like “digital picture frames” that manufacturers frequently advertise for use in viewing video programming.⁵⁸ For example, the manufacturer Envizen offers for sale a 10" “Digital Photo Frame” that it also advertises for use as a “perfect TV solution for a small space,” touting its “built-in digital ATSC tuners,” and ability to “selec[t] all available channels . . . with no monthly charge.”⁵⁹

As the opposition to CEA’s petition explains, the CVAA’s individual purpose-based waiver process is the only proper avenue to address the applicability of the apparatus rules in situations where a manufacturer believes that consumers would derive no benefit from making a device accessible.⁶⁰ CEA has failed to identify situations where such a waiver would clearly be appropriate, and its repeated attempts to contort the letter and the spirit of the

⁵⁶ *IP Closed Captioning Order*, 27 FCC Rcd. at 842, ¶ 95.

⁵⁷ *CEA Comments* at 10 & n.25 (citing *Ex Parte* Filing of CEA, MB Docket No. 11-154, at 3 (Nov. 26, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022065582> (“*CEA Ex Parte*”)).

⁵⁸ See *CEA Ex Parte* at 3.

⁵⁹ Amazon.com, *Envisen Digital EF71001 10" Wide Screen LCD Digital TV / Digital Photo Frame* (last visited Jan. 7, 2012), <http://www.amazon.com/Envizen-Digital-EF71001-Screen-Photo/dp/B001LV6IQM>.

⁶⁰ *TDI Opposition*, *supra* note 29, at 9-11.

CVAA instead of turning to the waiver process would place a minor inconvenience for electronics manufacturers ahead of the civil rights of millions of Americans with disabilities. Again, we urge the Commission to reject CEA's arguments in the strongest possible terms in this proceeding and to deny CEA's petition for reconsideration of the *IP Closed Captioning Order*.

V. The Commission should set a compliance deadline for the apparatus rules based on the date of sale to consumers, or require labeling for noncompliant products.

CEA proposes that the compliance date for the apparatus rules refer to the date of a device's manufacture, rather than its date of importation or sale.⁶¹ Again, this proposal rehashes arguments from CEA's petition for reconsideration of the *IP Closed Captioning Order*.⁶²

As several of the Consumer Groups explained in our opposition to CEA's petition, requiring compliance only by products manufactured after the apparatus rules go into effect risks confusion and uncertainty among consumers, who will have no way to know whether the products they are purchasing are accessible.⁶³ As the opposition explains in detail, we again encourage the Commission to clarify that the compliance deadline for the apparatus rules refers to the date by which products are manufactured, or alternatively, to require manufacturers to conspicuously label products with information regarding their accessibility features.⁶⁴

⁶¹ See *CEA Comments* at 12-13.

⁶² See *CEA PFR*, *supra* note 29, at 19-21.

⁶³ *TDI Opposition*, *supra* note 29, at 20-23.

⁶⁴ See *id.*

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Respectfully submitted,

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